

COPY

in opinion

417A

March 7, 1957

Honorable Norman A. McMeekin
Representative from Haverhill
House of Representatives
Concord, New Hampshire

Dear Representative McMeekin:

This is with respect to your letter of February 7, 1957, addressed to the Attorney General. In your letter you ask our interpretation of the words "direct taxes" as used in Article 26, Part Second, of the Constitution of New Hampshire.

The words quoted appear in Article 26 in the context "proportion of direct taxes paid by the said districts." In a letter of November 7, 1955, addressed to Senator Fred Kelley I pointed out that this phrase has never been the subject of a judicial opinion; nor do we find that the Supreme Court has ever passed upon the narrow term "direct taxes."

In such circumstances reference must be had to the substantive law as found in legal encyclopedias. In 30 American Jurisprudence it is stated:

"An early view was that only two types of taxes were direct, to wit: a capitation or poll tax, levied without regard to property . . . or any other circumstance; and a tax on land. . . . later it was held that the word 'direct' . . . embraced also taxes levied directly on personal property because of its ownership."

In my letter to Senator Kelley referred to above I suggested that it was apparently the general understanding that the basis of measurement under the constitutional provision cited is the amount of taxable property in each district. In the absence, however, of definitive advice from the Supreme Court the true interpretation of the language in issue must remain subject to question. In such

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Honorable Norman A. McMeekin

- 2 -

March 7, 1957

circumstances it is respectfully suggested that the General Court might wish to seek the opinion of the Court under the authorization contained in Article 74, Part Second, of the Constitution.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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